earning a profit. *Southern Ry. Co.* v. *Hatchett, supra; State* v. *Postal Telegraph Co.*, 96 Kan. 298; *Brownell* v. *Old Colony Railroad*, 164 Mass. 29; *Colorado, etc., Co.* v. *Railroad Commission*, 54 Colo. 64. But in Ohio, apparently, a corporation under a permissive charter has the right to discontinue any part of its service which it is not under contractual obligation to furnish. *Gas Co.* v. *City, supra.* See also *Selectmen of Amesbury* v. *Citizens' Elec. St. Ry.*, 199 Mass. 394; *Laighton* v. *City of Carthage, Mo.*, 175 Fed. 145. Ordinarily, where the discontinuance of part of the service results in a benefit to the public or is necessary to insure the financial success of the part operated, the state will take no action against the corporation. *Iowa* v. *Old Colony Trust Co.*, 215 Fed. 307. At common law, property devoted to a public use could be withdrawn in any case only after reasonable notice to the public. 1 WYMAN ON PUBLIC SERVICE CORPORATIONS, § 316. Many states now hold that a public utility corporation has no right to discontinue service without first obtaining the consent of the state, acting through its Public Utilities Commission. *People ex rel. Hubbard* v. *Colorado Title & Trust Co.*, 65 Colo. 472; *State* v. *Postal Telegraph Co.*, 96 Kan. 298; *Southern Ry. Co.* v. *Hatchett, supra.* The decisions of the commissions are subject to review by the courts. See cases last cited. It is also important to note that the right to discontinue service does not necessarily include the right to dismantle the plant. See *R. R. Commission of Ark.* v. *Saline River Ry. Co.*, 119 Ark. 239. Regarding the right to discontinue service, see L. R. A. 1915 A 549; 11 A. L. R. 252; 32 HARV. L. REV. 716. In *Northern Illinois Light & T. Co.* v. *Illinois Commerce Comn.* (Ill., Feb. 1922), 134 N. E. 142, a public service corporation was engaged in operating a street railway and also in furnishing light and power to a city. It was held that where an entire street railroad system was earning a reasonable return the company could not discontinue service on certain of its lines, even though those particular lines were not yielding a profit. But the court also held that the profit earned on one branch of the corporate business—*e. g.*, its light and power service—could not be considered in determining the right to discontinue service in regard to another branch of its business—*e. g.*, its street railway service—when the latter was being operated at a loss.

TRUSTS—INSURANCE TO A BENEFICIARY WITHIN PERMITTED CLASS IN TRUST FOR PERSON OUTSIDE CLASS.—Insured took out $5,000 of insurance with the Bureau of War Risk Insurance in favor of his mother. He desired to take out another $5,000 policy in favor of his fiancée, but was informed he could not name her as beneficiary. He thereupon took out the additional insurance in favor of his mother, but wrote a letter to his fiancée stating that his mother would pay over the money from the second policy to her. *Held,* evidence not sufficient to establish the existence of an executed trust. *Semble,* an attempt upon the part of the insured to accomplish by indirection what the statute forbids is illegal and unenforceable. *Caessna* v. *Adams* (N. J., 1921), 115 Atl. 802.

The decisions are conflicting in cases like the above where the insured

names a beneficiary within the permitted class, but charges this beneficiary with a trust to hold the proceeds of the policy for one outside the class. In Massachusetts the rule is that the next of kin, who would have been entitled in case no beneficiary were named, is entitled to the proceeds of the policy. *O'Brien* v. *Mass. Cath. Order of Foresters,* 220 Mass. 79. *Kerr* v. *Crane,* 212 Mass. 224, seems to decide that the intended beneficiary outside the class is entitled, but this is explained in the *O'Brien* case, *supra,* by the fact that the next of kin intervened in favor of the intended beneficiary. In some jurisdictions it has been held that the defense is one purely personal with the insurer. If the insurer does not object, the intended beneficiary is entitled to the proceeds of the policy. *Meyers* v. *Schumann,* 54 N. J. Eq. 414. In a suit by the intended beneficiary against the named beneficiary, who agreed to hold in trust, the general rule is that the intended beneficiary will prevail. 40 L. R. A. (n. s.) 692, note and cases cited. But equity should do complete justice, and although the suit is only one between the intended beneficiary and the named beneficiary, the outcome should not be different than if all parties were joined. The prohibition against naming certain classes of persons as beneficiaries was adopted by the insurance company for a purpose, and the insured assented to this when he took out the policy. Should not a court of equity declare that an attempt to evade this prohibition is void and give the proceeds of the policy to the next of kin or to such persons as would have been entitled if no beneficiary were named?

WATERS AND WATER COURSES—EFFECT OF DESERT LAND ACT.—The Act of March 3, 1877, generally known as the Desert Land Act, provides for the sale of desert lands to persons who agree to irrigate and cultivate such lands. The act defines desert lands as lands which will not, without some irrigation, produce crops, and provides that the Commissioner of the General Land Office shall determine what may be considered as such lands; it provides also that the right to the use of water on such lands shall depend upon appropriation, and continues as follows: "and all surplus water over and above such actual appropriation and use, together with the water of all lakes, rivers, and other sources of water supply upon the public lands * * * shall remain and be held free for the appropriation and use of the public for irrigation, mining and manufacturing purposes, subject to existing rights." Defendants were appropriators of water from Spearfish Creek, and plaintiffs (apparently since March 3, 1877) had acquired title to lands bordering on that stream; defendants diverted all the water in the stream during a dry summer, in order to satisfy their appropriations, and plaintiffs brought an action to determine their riparian rights. It did not appear that either the riparian lands of plaintiffs or the lands on which the defendants used the appropriated water had been obtained under the Desert Land Act. *Held,* that no riparian rights exist in connection with any public lands granted by the government after the passage of the Desert Land Act. *Cook et al.* v. *Evans et al.* (S. D., 1921), 185 N. W. 262.

In a similar case in California appropriators sued to prevent the use